IN DEBTS RECOVERY APPELLATE TRIBUNAL, ALLAHABAD

Appeal Dy. No. 470/2024

1. Punjab National Bank, through its Authorized Officer, Circle SASTRA Centre, Circle Office, Arera Hills, Bhopal, M.P.-462011.
2. Punjab National Bank, Nehru Nagar Branch, Bhopal, M.P.-462001.

.....Appellant

Versus

1. M/s Extol Education Society through its Chairman, 103, Barkhedi Road, Bhopal, M.P.-462001.
2. Sheela Bhatnagar, W/o Shri G. K. Bhatnagar, R/o 1/3, Amaltas Complex, Shahpur, Bhopal, M.P.-462016.
3. Aditya Bhatnagar, alias-Abhinav Bhatnagar, S/o Shri G. K. Bhatnagar, R/o 1/3, Amaltas Complex, Shahpur, Bhopal, M.P.-462016.
4. M/s Astha Credit and Securities Pvt. Ltd. through its Director: Shri Satish Chandra Gupta, S/o Shri Jeewan Lal Gupta, R/o F-01,138/42, Usha Preet Complex, Malviya Nagar, Bhopal, M.P.-462001.

.....Respondents

Appeal Dy. No. 472/2024

M/s Astha Credit and Securities Pvt. Ltd. through its Director: Shri Satish Chandra Gupta, S/o Shri Jeewan Lal Gupta, R/o F-01,138/42, Usha Preet Complex, Malviya Nagar, Bhopal, M.P.-462001.

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.....Respondents

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Advocates, who appeared in this case:

For the Bank	Shri S. K. Pandey, Advocate
For the borrower	Shri Rajat K. Mittal along with Shri Gaurav Yadav, Advocate
For the auction purchaser	Shri Kashif Zaidi, Advocate

JUDGMENT
Date of Pronouncement: 20.05.2026

JUSTICE R. D. KHARE, CHAIRPERSON

1. The above mentioned appeals have been filed under section 18 of the Securitization and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") against the same judgment dated 22.02.2024, whereby the Securitization Application No. 67/2022 filed by the borrowers has been allowed, therefore, these appeals are being decided by this common order.

2. Brief facts of the matter are that the respondent no. 1 was granted certain credit facilities by the appellant-Bank and the said facilities were secured by equitable mortgage of various properties including property in question. Since the borrowers did not adhere to the terms of loan agreement, therefore, account was classified as NPA and a demand notice dated 03.10.2016 was issued u/s 13(2) of the SARFAESI Act followed by possession notice dated 06.01.2016 u/s 13(4) of the said Act.

3. The borrowers challenged the entire proceedings of the Bank by filing S.A. No. 20 of 2017 before the Tribunal below.

4. It appears that during the pendency of the aforesaid S.A., the appellant-Bank approached the District Magistrate, Bhopal by filing application u/s 14 of the SARFAESI Act for physical possession of the secured assets in question, which was allowed vide order dated 30.06.2017. The

respondents-borrower challenged the said order passed by the District Magistrate by way of amendment in the pending S.A., which was allowed and granted time bound conditional interim protection, but thereafter, the appellant-Bank withdrew the demand notice dated 03.10.2016 and the entire proceedings, therefore, the said S.A. was dismissed as having become infructuous vide order dated 22.02.2024.

5. It is averred that after withdrawing the aforesaid proceedings, the appellant-Bank issued fresh demand notice dated 31.05.2021 u/s 13(2) of the SARFAESI Act for a sum of Rs.13,72,30,509.46 with further interest and costs, which was objected by the borrowers vide representation dated 26.07.2021. The appellant-Bank considered the representation of the borrowers and rejected the same, which was communicated to the borrowers vide letter dated 30.07.2021. Thereafter, the appellant-Bank issued possession notice dated 14.01.2022 u/s 13(4) of the SARFAESI Act, which was served, affixed and published in the newspapers.

6. The respondents-borrowers challenged the demand notice and possession notice before the Tribunal below by filing S.A. No. 67/2022. Since the borrowers did not pay any amount, therefore, the appellant-Bank proceeded to get the property in question valued from two approved valuers of the Bank and fixed the reserve price with the consultancy of the secured creditor and issued the auction sale notice dated 05.09.2022 scheduling the auction of the property in question on 14.10.2022, but the said sale could not materialize for want of bidders. The appellant-Bank again issued sale notice dated 03.12.2022 scheduling the auction of the property on

28.12.2022, but the same could also not materialize for want of bidders.

7. It further appears that consequent upon failure of first two auctions, the appellant-Bank fixed the reserve price by reducing the earlier reserved price for third auction and issued auction sale notice dated 31.01.2023, which was served upon all the borrower/guarantors/mortgagors by registered post on 03/06.02.2023. The said sale notice was also published in newspapers on 01.02.2023 scheduling the auction of the property in question on 24.02.2023 and also pasted at the secured assets and the property was sold in favour of the Respondent no. 4 for a sum of Rs. 12,64,25,000/-. The sale was confirmed by the secured creditor vide resolution dated 28.02.2022 after receipt of 25% of the auction amount, but the sale certificate could not be issued on account of interim order passed by the Tribunal below.

8. The respondents-borrowers challenged the aforesaid auction sale notice by way of amendment in the pending S.A. No. 67/2022 along with stay application, which was allowed and the S.A. was amended accordingly and the Auction Purchaser was also impleaded as respondent.

9. It transpires that in the meantime, the appellant-Bank approached the District Magistrate, Bhopal by filing application u/s 14 of the SARFAESI Act, which was allowed vide order dated 04.05.2023 by directing to handover the physical possession of the secured asset to the appellant-Bank, which was challenged by the borrowers by way of amendment in the aforesaid S.A., which was allowed and the S.A. was amended accordingly.

10. The Tribunal below vide order impugned has allowed the S.A. of the respondent-borrower by setting aside the entire proceedings of the Bank except demand notice dated 31.05.2021. Being aggrieved by the said order, the Appeal Dy. No. 470/2024 has been filed by the appellant-Bank and the Appeal Dy. No. 472/2024 by the Auction Purchaser.

11. Learned counsel for the appellant-Bank submitted that the Tribunal below has erred in setting aside the possession notice, sale notice and its subsequent actions while passing the order impugned. It was further contended that the possession notice was issued in accordance with the Act and Rules made thereunder and the same was served, affixed and published in the newspapers. In support of his contention, the learned counsel has referred to page no. 73 to 82 of the memo of appeal, which are copies of possession notice, postal receipts, tracking report and its affixation and publication in the newspapers. It was also contended that the borrowers have admitted the pasting of possession notice dated 14.01.2022 in para 5.37 of its S.A. It was thus contended that there is no violation of Rule 8(1) and 8(2) of the Rules, 2002.

12. Learned counsel further submitted that after taking possession of the property in question, appellant-Bank got the property valued. It was also contended that prior to the present sale, the properties were put to auction eight times, but could not be sold for want of bidders. It was further contended that the property in question is an educational institution on the land in question, for which there is Rule of the Government to fix the value of the land used for educational institution and according to it, the land rate would be 60% of the rate applicable for

residential land and as per Govt. Rule, for valuation of the property in question, the value of the property in question is Rs. 6.50 crore, but the Auction Purchaser has tendered the bid for Rs.12.60 crores, which is more than the market price of the property in question. It was also contended that besides it, neither the borrower nor the prospective bidder has offered any higher price for the property in question. It was thus contended that the property in question has been sold on the competitive market price.

13. Learned counsel also submitted that the third sale notice dated 31.01.2023 was published in the newspapers on 01.02.2023 scheduling the auction of the property on 24.02.2023. It was further contended that the sale notice dated 31.03.2023 was served upon the borrowers 15 days prior to the auction sale and was pasted on the secured asset. It was further contended that the said sale notice was issued and published with detailed description of the property in question and also allowed time for inspection of the property, amount of debt due and reserve price, below which property would not be sold at the auction scheduled on 24.02.2023. It was also contended that the Tribunal below has erred in holding that no 30 days' sale notice and its publication has been proved by the appellant-Bank, as no document regarding earlier sale was produced by the Bank, whereas the S.A. applicant themselves had filed paper publication of sale notice with their stay application dated 19.02.2023, but not filed second paper. It was further contended that although the same were filed by the Auction Purchaser, which are on the record of proceeding and acknowledged by the Tribunal below.

14. Learned counsel further submitted that once the Tribunal below has accepted the authority of the Bank for issuing fresh demand notice, withdrawing earlier demand notice issued and held validity of fresh demand notice dated 31.05.2021, there would be no legal occasion for holding bar in entertaining application u/s 14 of the SARFAESI Act by the District Magistrate.

15. It was further submitted that the order passed by the D.M. is contesting order and the same was passed on consideration of material available on record and as such, the Tribunal below has completely failed to consider that cause of action, on basis of which earlier order was passed, did not survive after withdrawal of earlier demand notice and issuance of fresh demand notice u/s 13(2) of the SARFAESI Act, 2002.

16. It was further submitted that the Tribunal below has committed material illegality and irregularity in passing the order impugned, based on extraneous consideration. The findings recorded by Tribunal below are perverse and against record and based on misreading of judgments cited in the order. It was, therefore, prayed that the order impugned may be set aside to the extent of possession notice dated 14.01.2022, sale notice dated 31.01.2023 and auction on 24.02.2023 and the appeal filed by the Bank may be allowed.

17. Learned counsel for the Auction Purchaser has adopted the arguments as advanced by the learned counsel for the Bank adding further that the appellant in Appeal Dy. No. 472 of 2024 has paid entire sale consideration in accordance with the Act and Rules made thereunder, but due to the interim order, sale certificate has yet not been issued. It was further contended that the auction sale can only be set aside, if there is fundamental error in the

procedure of auction like not giving wide publication or fraud has been done in conducting the auction of the property. It was, therefore, prayed that the order impugned may be set aside and the appeal filed by the appellant may be allowed.

18. Learned counsel for the borrowers submitted that the issuance of the Fresh Demand Notice has resulted in substantial and unjustified inflation of the alleged dues, with the amount increasing from ₹8,60,34,833/- to ₹13,72,30,509/-. It was further submitted that the Fresh Demand Notice dated 31.05.2021 reflects a highly inflated and erroneous computation of dues arising from impermissible charging of interest upon interest in place of simple interest over NPA value. It was also contended that upon proper adjustment of interest in accordance with applicable accounting norms, it is evident that the alleged dues stand inflated to the extent of ₹3,91,86,021/- solely on account of such wrongful interest calculations.

19. Learned counsel further submitted that the NPA date is stated to be 03.10.2016, whereas fresh demand notice does not give any date of NPA classification and in proceedings before the District Magistrate u/s 14, the Bank has represented the NPA date as 17.05.2021. It was further contended that there cannot be multiple dates of NPA for the same loan account, as the cause of action for issuance of demand notice under Section 13(2) arises from such classification. It was also contended that in absence of a consistent and valid NPA classification, the entire proceedings initiated under Sections 13(2), 13(4) and 14 are illegal and unsustainable in law without prejudice, even assuming the Appellant-Bank's stand that the account was classified as NPA on 17.05.2021, no

interest could have been charged for the period prior to that and in any event, having admittedly withdrawn the earlier Demand Notice dated 03.10.2016, the Bank could not have levied interest for the intervening period from 03.10.2016 to 31.05.2021. It was also contended that the Bank cannot, on one hand, withdraw the earlier proceedings and on the other, continue to burden the Respondents in the interest for the same period and as such the conduct of the Bank is wholly arbitrary.

20. Learned counsel also submitted that the subject property being a diverted commercial land was valued at Rs. 34.44 & Rs. 33.23 Crores by two separate valuers of the bank in the year 2014 vide reports dated 22/09/2014 & 13/10/2014 at the time of loan, which was subsequently valued at Rs. 17.40 Crores after 8 years and auctioned at a reserve price of Rs. 12.60 Crores to the 'sole' Auction Bidder on 24/02/2023. It was further submitted that the subsequent valuation reports from valuers Mr. Rajan K. Raina dated 07/06/2022 and Mr. Dinesh Vinayakya dated 21/07/2022 were made in violation of all norms and guidelines of the Bank Circular dated 07/04/2021. It was also contended that the perusal of the Reports would show that reports were prepared admittedly by unregistered valuers as per Section 7(6) of SARFESI Act without inspection of the property, circle rate as per collector guidelines is given as "not available", nearly 40% columns were left blank. The land which was considered at Rs, 3000/- to Rs. 3500/- per square feet in the year 2014 has been considered at Rs.1205/- per square feet in the valuation report relied upon by the bank dated 07/06/2022 and 21/07/2022. It was thus contended that the Tribunal below has rightly set-aside the valuation reports after perusing the collector guidelines rates showing the value of the subject-

property at Rs.61.00 Crores at the time of auction on 24.02.2023 and IBBI Approved Valuer's report showing the property worth at Rs. 71.4 Crores for forced sale.

21. It was further submitted that the statement of account clearly demonstrates that no charges were ever debited towards valuation expenses against the Borrower's Account in respect of the valuation reports of 2022 nor there is any record of engagement or authorization of the said valuers and the Appellant-Bank has failed to produce any record evidencing requisition, approval, or acceptance of such valuation reports. It was thus contended that moreover, the said reports were produced as an after-thought before Tribunal below to justify the throwaway auction bid amount.

22. Learned counsel further submitted that the criminal proceedings have been initiated against the valuers and the Bank officials before the Criminal Court & EOW. In those proceedings, Mr. Rajan K. Raina, who had prepared one of the valuation reports in 2022, has himself admitted that he did not visit the property and he valued it as 'undeveloped agricultural land", not as a diverted commercial property. It was thus submitted that if the property is treated as agricultural land, then the same could not have been proceeded against under the SARFAESI Act in view of the express bar contained under Section 31(i) of the SARFAESI Act and as such the Appellant-Bank failed to justify before the Tribunal below as to how the subject property was sold at a price grossly undervalued and nearly 1/5th of the prevailing rates. It was further contended that the valuation reports relied upon were neither credible nor in compliance with the Bank's own Circular dated 07.04.2021. It was thus contended that the Tribunal below has rightly held the

valuation to be vitiated and the findings warrant no interference.

23. Learned counsel further submitted that there is violation of Rule 8(6) of the Rules, 2002 and the Tribunal below has confirmed from records that the notice of sale was not served upon all borrowers on their correct addresses and the Bank has failed to provide any explanation or evidence before the Tribunal below to substantiate the service of auction notice dated 01/02/2023. It was further contended that the notice was only sent on 03/02/2023 to the borrowers, but not on their correct addresses. In support of his contention, learned counsel has placed his reliance on a case of Mathew Varghese Vs. M Amritha Kumar & Others (2014) 5 SCC 610 (Para 29-33) and the Hon'ble DRAT Allahabad in State Bank of India, SARB v. Kush Kumar Verina & Another, Regular Appeal No. 135/2017 (Para 15), wherein it has categorically been held that service of individual notice is a statutory requirement and non-compliance vitiates the entire proceedings.

24. Learned counsel also submitted that the Borrower was not given any opportunity to redeem its assets before the auction. It was further contended that the Auction Sale notice was published on 01/02/2023, but the notice under Rule 8(6) dated 01/02/2023 was dispatched only on 03/02/2023 and not delivered to the title holder "Sheela Bhatnagar" and Bank never furnished the notices on the correct address of the Borrowers. In support of his contention, the learned counsel has relied upon a judgment passed by the Hon'ble High Court in Celir LLP Vs. Bafna Motors, wherein it is held that the Bank must strictly adhere to the statutory redemption period under Section 13(8) of the Act. It was further contended that in

the present case, the auction of the property conducted on 24/02/2023 is illegal, since the sale notice under Rule 8(6) has not been issued and delivered in accordance with law to give opportunity to borrowers to redeem its property.

25. Learned counsel further submitted that there is violation of Rule 8(7) of the Rules, 2002 as no sale notice was affixed at the conspicuous place of the property in question that in the present case, the Borrowers placed on record before the Tribunal below an affidavit of the Guard showing that the notice was pasted only on 22.02.2023 i.e. merely two days prior to the auction dated 24.02.2023 and that too at an inconspicuous place, thus such last-minute affixation defeats the very purpose of public notice and transparency and renders the entire auction process illegal.

26. It was also contended that proviso to Rule 8(6) mandates that the notice of auction to be published in two leading newspapers including one in vernacular language having wide circulation in the locality. It was further contended that in the present case, the auction notice was published in the newspaper "Hitavada", which has significantly very low circulation in Bhopal, thereby, defeating the object behind publication in leading newspaper. As per data available from the Directorate of Advertising and Visual Publicity (DAVP), the circulation of "Hitavada" in Bhopal is only 5,586 copies, whereas other widely circulated newspapers such as Central Chronicle (25,000 copies), The Pioneer (20,864 copies), The Times of India (16,876 copies) have substantially higher circulation, nearly three times or more than that of "Hitavada". It was thus contended that such publication in low circulated newspaper was done by officers of Bank with an intent to

restrict participation of bona-fide bidders and give undue advantage to the sole auction bidder, thus the entire auction process via public sale stands vitiated and is liable to be set aside.

27. It was further submitted that possession notice has not been delivered by hand or by post to the respondents, which is violation of Rule 8(1) & (2) of the Security Interest (Enforcement) Rules, 2002.

28. It was further submitted that the subject property comprising of four different portions has been wrongly described in the auction proceedings. The subject property comprising of two portions has been shown as belonging to M/s Extol Education Society, whereas in fact, title holder of the same is Smt. Sheela Bhatnagar. It was further contended that the Sale Deed and Hrin Pustika clearly establish the title holder of the said properties in the name of Smt. Sheela Bhatnagar.

29. It was further submitted that the Appellant-Bank was fully aware of the correct title position and the Bank's own legal search report filed before the District Magistrate in S.14 proceedings, which clearly records that two out of four alleged mortgaged properties stand in the name of Smt. Sheela Bhatnagar, but despite such knowledge, the Bank deliberately described the said properties as belonging to Extol Education Society in the auction notice under Rule 8(6) and publication under Rule 9(1) and related proceedings.

30. It was further contended that in fact, the aforesaid two properties were never mortgaged with the Bank by the Borrowers and at the time of creation and taking over of the loan facility from Reliance Capital, the Borrower had submitted a letter enclosing title deeds only in respect of

two properties belonging to Extol Education Society and not the properties in name of Smt. Sheela Bhatnagar, which was duly acknowledged by the Appellant-Bank.

31. It was also submitted that the reserve price was fixed arbitrarily as Rs. 15.60 Crore when the alleged market price is shown as Rs.17.40 Crore without any justification and without following the mandatory statutory procedures, as no record of approval by the Reserve Price Committee was produced before the Tribunal below despite specific allegations relating to fraud regarding valuation and reserve price and the Bank also failed to disclose the minutes of meetings of Reserve Price Committee or any record.

32. It was also contended that the Bank has introduced fresh documents as an after-thought in the present Appeal, as was not produced before the Tribunal below certain documents purporting to be records of the Reserve Price Committee. It was further contended that the alleged Reserve Price Committee decision is shown to have been taken on 31.01.2023, while the auction sale notice was published on 01.02.2023. It was further contended that this sequence clearly indicates that the alleged committee record is not genuine and has been fabricated to justify an otherwise arbitrary reserve price in the appeal

33. It was further submitted that this Tribunal, while exercising appellate jurisdiction, cannot take into consideration fresh documents which were not produced before the Tribunal below particularly when no sufficient cause is shown for such non-production and Bank deliberately did not produce any record despite there being ample time. It was thus contended that the Tribunal below has already set aside the valuation reports and consequential actions after a detailed consideration

of the material available on record. It was, therefore, prayed that the appeals filed by the Bank and the Auction Purchasers may be dismissed with heavy costs.

34. I have considered the rival contentions of the learned counsels for the parties and perused the material available on record.

35. The grievance of the respondent-borrower against the finding of the Tribunal below with regard to issuance of fresh demand notice dated 31.05.2021 issued by the Bank cannot be considered in the present case because the said notice has been held to have been issued in accordance with the Act and Rules made thereunder. If there was any grievance against the finding of the Tribunal below with regard to the demand notice, the respondent-borrower ought to have challenged the same by filing separate appeal, but the respondent-borrower did not do so, therefore, they cannot be permitted to raise their grievance in the appeal filed by the Bank and the Auction Purchaser. Thus the contentions of the respondent-borrower that the issuance of the said notice was a calculated attempt to circumvent the existing interim stay order dated 06.06.2018, by which the Tribunal below had stayed the possession pursuant to earlier proceedings arising from the demand notice dated 03.10.2016 and resulted in substantial and unjustified inflation of the alleged dues with the amount increasing from Rs.8,60,34,833/- to Rs. 13,72,30,509/- are not tenable.

36. With regard to compliance of Rule 8(1) and 8(2) of the Security Interest (Enforcement) Rules, 2002 (hereinafter referred to as "the Rules, 2002"), it is stated that the possession notice was issued on 14.01.2022 and the same was dispatched to the borrowers on 14.01.2022

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and the same was delivered on 22.01.2022. Copies of possession notice dated 14.01.2022, postal receipts and its tracking reports are at page no. 73 to 77 of the memo of appeal. The possession notice was also affixed at the conspicuous place of the property in question and published in the newspapers, copies of which are at page no. 79 to 82 of the memo of appeal. As such the appellant-Bank has complied with the Rules 8(1) & 8(2) of the Rules, 2002. It is relevant to point out that the respondent-borrower has not argued/objected the said fact either orally or in their written arguments. As such the finding of the Tribunal below that the possession notice was not affixed and published in accordance with Act and Rules made thereunder is erroneous. Hence the order impugned to this extent is liable to be quashed.

37. So far as the compliance of Rule 8(5) of the Rules, 2002 is concerned, the appellate-Bank prior to proceeding for auction of the properties in question got the properties in question valued from two valuers namely Dinesh Vinaykya and Rajan K. Raina on 07.06.2022 and 21.07.2022 respectively. Copies of both the valuation reports are at page no. 152 to 169 of the memo of appeal. As per the valuation report dated 07.06.2022 of Dinesh Vinaykya, the market value of the properties in question was shown to be Rs.17.40 Crore, realisable value Rs.15.66 Crore and distress value Rs.13.05 Crore, but as per valuation report dated 22.07.2022 of Rajan K. Raina the market value of the properties in question was shown to be Rs.17.28 Crore, realisable value Rs.15.55 Crore and distress value Rs.12.96 Crore. In this regard, the contention of the respondent-borrower that the said reports were prepared without inspection of the property in question is not tenable because the said reports contain each and every detail of the properties in

question. The contention of the respondent-Borrower that nearly 40% columns of the said reports were left blank is also not tenable, as each and every column of the reports are containing the information as required while getting the properties valued. The other contention of the borrower that the Tribunal below has rightly set aside the valuation reports after perusing the collector guidelines rates, showing the value of the subject property at Rs.61.00 crorès is also not tenable because in many times experienced that sometimes the value of the properties is much more than the circle rates as prescribed by the concerned State Government, but it is also experienced that the value of some properties is much less than the circle rate of the concerned State Government, therefore, it is incorrect to say that the value of the property shall always remain over and above the circle rate approved by the concerned State Government. Thus the appellant-Bank has rightly got the properties valued from the aforesaid valuers before effecting the auction sale on 24.03.2023. In the present case, it is also to be noted that the properties in question were put to auction several times, but the sale was not materialized for want of bidders, therefore, the reserve price of the property in question was being reduced gradually by the Bank and as such, the appellant-Bank has rightly reduced the reserve price of the properties in question. In this regard, the proposal for fixation of reserve price before Circle Sastra Committee for enforcement of Security Interest dated 31.01.2023 is relevant, copy of which is at page no. 207 of the memo of appeal. The reason given by the Bank for reducing the reserve price in the said report is *"As per NEC of advocate Ku. Neera Verma dated 25.05.2021, the property is SARFAESI enforceable. Latest valuation has*

been done from two valuer Build-O-Tech dated 18.04.2022 and Shri Dinesh Vinaykya dated 07.06.2022 (Since price of property is more than Rs.5.00 Crore, hence two valuation is required, and average price will be taken for fixing auction). 1st auction was held dated 14.10.2022 for Rs.1560.50 lakh, but no bid received. Last auction was held dated 28.12.2022, but no bid received." From it, it is clear that the property in question was not being sold due to higher price, as was being fixed by the Bank. Thus the appellant-Bank has rightly reduced the reserve price of the property in question, while auctioning the property in question on 24.02.2023. However, if the property in question was being sold at undervalued price, the respondent-Borrower ought to have produced the prospective buyer before the Bank, who could offer better price, but the respondent-Borrower did never do so, therefore, the finding of the Tribunal below that the property in question was not valued properly is not tenable.

38. So far as the auction sale dated 24.02.2023 is concerned, the sale notice under Rule 8(6) was issued on 01.02.2023 and the same was sent to the borrowers, which was served upon them and the said notice was also published in two newspapers and affixed at the conspicuous place of the property in question, scheduling the auction of the property in question on 24.02.2023. Copies of the said documents has been placed at page no. 209 to 220 of the paper book. Thus the finding of the Tribunal below with regard to non-compliance of Rule 8(6) is not tenable.

39. With regard to the order dated 04.05.2023 passed by the District Magistrate u/s 14 of the SARFAESI Act, it is stated that there are two provisions, one for the Bank u/s 13(4) of the SARFAESI Act, by which the symbolic

possession of any kind of the properties is taken by the Bank and another is u/s 14 of the said Act for the Bank to take physical possession of the property in question in case the Borrower/Mortgagor resists the same. The Section 14(3) of the SARFAESI Act says "*No act of the Chief Metropolitan Magistrate or the District Magistrate, [any officer authorized by the Chief Metropolitan Magistrate or District Magistrate] done in pursuance of this Section shall be called in question in any Court or before any authority.*" Thus the order passed by the DM or CMM cannot be challenged before any Court or Tribunal. Hence the order impugned setting aside the order of the District Magistrate is not sustainable.

40. In view of the discussions as recorded above, the order impugned to the extent of setting aside the possession notice, the sale notice and the order of the District Magistrate is set aside and the appeal filed by the Bank and Auction Purchaser are allowed with no order as to costs.

41. A copy of this judgment be forwarded to the parties as well as the DRT concerned and be also uploaded on the e-DRT portal.

CHAIRPERSON

VN GIRI,PS